

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 95-116
Telephone Number Portability) RM 8535
)

REPLY COMMENTS OF MCI

MCI Telecommunications Corporation ("MCI"), by its attorneys, hereby submits these reply comments in support of its petition for clarification and partial reconsideration¹ of the *Third Report and Order* in this proceeding.²

INTRODUCTION

Eleven parties, including MCI, filed comments on the petitions for reconsideration submitted in connection with the Commission's *Third Report and Order* on recovery of local number portability ("LNP") costs.³ None of these comments contradicts the basic point of MCI's own petition — that certain services which have no relation to LNP and that are completely unaffected by portability of local telephone numbers (private lines, virtual network and toll-free services, and outbound international services) should not be included in the scope of the "end user revenue" allocator for shared LNP costs. The commenters also agree with MCI that incumbent local exchange carriers ("ILECs") should not be permitted to evade the Commission's clear

¹ MCI Telecommunications Corp., *Petition for Clarification and Partial Consideration*, CC Docket No. 95-116 (filed July 29, 1998).

² *Telephone Number Portability, Third Report and Order*, CC Docket No. 95-116, RM 8535, FCC 98-82 (rel. May 12, 1998), 63 Fed. Reg. 35,150 (June 29, 1998) ("*Third Report and Order*").

³ Commenting parties included AT&T Corporation ("AT&T"), Bell Atlantic, BellSouth Corporation ("BellSouth"), Cincinnati Bell Telephone Company ("Cincinnati"), SBC Communications, Inc. ("SBC"), Telecommunications Resellers Association ("TRA"), UTC, the Telecommunications Association, United States Telephone Association ("USTA") and Vanguard Cellular Systems, Inc. ("Vanguard").

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determination that carrier-specific LNP costs can be recovered through end user or query service charges, but not access charges or other charges to competing carriers.⁴

DISCUSSION

I. THE SHARED LNP COST ALLOCATOR SHOULD NOT INCLUDE REVENUES FROM SERVICES THAT ARE NOT AFFECTED BY LNP

The Commission determined in its *Third Report and Order* that the shared costs of each regional Number Portability Administration Center ("NPAC") database will be allocated among all telecommunications carriers based on their combined intrastate, interstate and international end-user telecommunications revenues for each region.⁵ Because this standard would allow the allocation of shared costs based on revenues completely unaffected by LNP, MCI's reconsideration petition requested that the Commission exclude from the shared cost allocator revenues from private line, toll free, outbound international and virtual private network services.⁶ Although MCI's request is opposed by Bell Atlantic and SBC,⁷ there can be no legitimate dispute that an "all end-user telecommunications revenues" allocator

captures services that are completely unrelated to LNP, that neither use numbering resources nor impose any costs on the NPAC system, and that (unlike universal service) receive no benefits either from local competition or local number portability.⁸

⁴ MCI seeks clarification of the *Third Report and Order* on two non-controversial points, neither of which was opposed on the substantive merits by any commenting party. First, MCI asked the Commission to require that the LNP administrator recover its own costs of billing and collections, specifically the cost of uncollectibles, through a mechanism that would ensure the realization of sufficient revenues, rather than over-recovering from contributing carriers based on "estimated" uncollectible receivables. MCI Petition 2-3. Second, MCI requested that the Commission clarify that carriers are not required to develop costly new accounting mechanisms for disaggregating end user revenues, but rather could attribute revenues regionally using a *pro rata* or other reasonable methodology. MCI Petition at 8-9. Lockheed Martin IMS indicated in its response that, because Lockheed is addressing MCI's requests through informal discussions with industry members, FCC action on MCI's requests at this time would be "premature." Lockheed at 2-3. However, Commission clarification is still necessary in order to guide these industry discussions. Thus, because there were no challenges to the substantive merits of these straight-forward requests, the Commission should grant MCI's requested clarifications.

⁵ *Third Report and Order* ¶¶ 105, 113.

⁶ MCI Petition at 3-6.

⁷ Bell Atlantic at 3-4; SBC at 5-6.

⁸ MCI Petition at 3.

Bell Atlantic chose not even to argue against the exclusion of these service revenues based on the merits of their relationship to LNP, but rather ostensibly relies on a “slippery slope” contention that their exclusion will provide the basis upon which other revenues from other service might be excluded in the future.⁹ According to Bell Atlantic, “If the Commission starts down this path, then every provider would want to exclude other revenues too.”¹⁰ This slippery slope rationale misses the main point of using a revenue allocator for determining cost recovery obligations for shared LNP costs. Carriers should only be obligated to pay for LNP under the competitive neutrality criterion of Section 251(e) of the Act to the extent that their end user services benefit from LNP. If in fact there are other end user services that do not use public numbering resources and are unaffected by LNP, they should properly be excluded as well. While MCI believes that it is very unlikely that other services will meet this standard, its petition is premised on the point that unlike universal service, number portability is a terminating service that does not benefit all carriers and all end user services equally.¹¹

SBC does address the merits,¹² but fails to show how any of the end user services that MCI has proposed to exclude from the shared cost allocator actually benefit from LNP. SBC

⁹ Bell Atlantic at 4.

¹⁰ Bell Atlantic at 4.

¹¹ MCI Petition at 3-4. Bell Atlantic also argues that the exclusion of revenues from these non-LNP related services could necessitate a “great deal of extra bookkeeping,” without a comparable reduction in the amount that carriers pay. Bell Atlantic at 3-4. To the contrary, the categorization of revenues by services is undertaken by all carriers in the ordinary course of business, and for those carriers with substantial virtual network and outbound international services, such as MCI, the proper exclusion of these LNP-indifferent services from the shared cost allocator would have a substantial impact on the allocation of shared LNP costs.

¹² SBC argues that the Commission has previously applied cost recovery formulas that are inclusive of all international, interstate and intrastate end-user revenues, citing numbering administration as an example. SBC at 6 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1998*, Second Report and Order, 11 FCC Rcd. 19392, 19539-41 (1996)). That is precisely the point of MCI’s petition. Unlike universal service and number administration, which are general matters without which there essentially could be no telecommunications industry in the first instance, it is impossible to argue that all services are affected by or benefit from LNP. Therefore, it is not enough simply to rely on these other cost allocators without addressing the fact that the justification for their use is inapplicable to the markedly different circumstances of LNP.

does not even contest that, by definition, private line services do not utilize resources of the public switched telephone network (“PSTN”), including telephone numbers, and that private lines are completely unaffected by the availability of either local competition or LNP.¹³ More importantly, under SBC’s reasoning, carriers whose services are unquestionably removed from LNP, for instance carriers that provide only international outbound services or only provide private line services, would still be subject to significant LNP charges without receiving any corresponding LNP benefits. Such an outcome would be patently unfair and inconsistent with the competitive neutrality requirement because, unlike universal service and other cost recovery schemes for functionalities that equally benefit all service providers, regardless of their position in the telecommunication industry, LNP clearly does not provide across-the-board benefits to all carriers. Consequently, as MCI argued, the *Third Report and Order*’s assumption that an allocator encompassing all intrastate, interstate and international revenues is appropriate “because number portability will affect all such services” is incorrect.¹⁴

The linkages that SBC’s opposition attempts to draw between LNP and the services for which MCI has proposed exclusion are just not there. **First**, SBC argues that international services benefit from LNP because “[i]nternational calls terminated to customers within the United States can terminate to ported numbers.”¹⁵ Yet MCI proposed exclusion of international out-bound services,¹⁶ which in the context of today’s telecommunications industry are almost always

¹³ SBC discussed only toll-free services, virtual private network services and international calls, and failed to discuss private line calls, which clearly do not utilize numbering resources as such calls do not utilize the public switched telephone network.

¹⁴ See MCI Petition at 4 (citing *Third Report and Order* ¶ 89).

¹⁵ SBC at 6 (emphasis added).

¹⁶ MCI Petition at 2.

the only type of international traffic that United States carriers are permitted to carry.¹⁷ Thus, because international end user revenues only arise from outbound traffic terminated in other countries, international services do not use telephone number resources and are not affected by LNP.

Second, SBC argues that virtual network services are affected by LNP because virtual services can “allow on-net and off-net calling to potentially ported numbers.”¹⁸ “Potentially” porting and actual porting are entirely different scenarios, and MCI urges the Commission to reject SBC’s attempt to impose charges based on the hypothetical possibility that some small proportion of virtual network services may include off-net termination to ported PSTN numbers. As MCI has explained, the numbering schemes used by virtual network services do not consume telephone numbering resources, but rather are carrier-generated and end-user specific, so that virtual network services neither burden nor benefit from the LNP system.¹⁹

Third, SBC argues that toll-free services benefit from LNP “because they depend on a POTS translation before a toll-free call can be completed and the POTS line may be a ported number.”²⁰ But toll-free number translation is performed in a separate numbering database subject to pre-existing, separate cost recovery rules, so that POTS translation is an insufficient rationale for including toll-free revenues in the scope of the shared cost allocator. Moreover, in the case of MCI’s toll-free services, SBC’s argument is factually incorrect because MCI today does not depend on POTS translation, but instead translates its toll-free numbers into routing (CIC) codes, not PSTN resources, for termination.

¹⁷ International settlement revenues are paid to United States carriers by foreign governments or foreign carriers, thus any inbound international revenues are not “end user” revenues.

¹⁸ SBC at 6.

¹⁹ MCI Petition at 5. Furthermore, if off-net virtual network calls do involve LNP routing, the database queries involved are carrier-specific costs for which cost recovery is not a shared industry cost.

In sum, the circumstances of LNP are different from the generic, industry-wide cost recovery schemes the Commission has devised in the past, such as for universal service and numbering administration, and thus demand a narrower scope of cost recovery obligations. The specific services isolated by MCI have no relation to LNP, and their inclusion in the shared cost allocator would serve only to shift cost recovery responsibility unfairly toward carriers, such as MCI, that realize a substantial proportion of their end-user revenues from services that are neither affected by nor related to LNP. Even if it were simpler to apply an all end-user revenue criterion — which is not the case in view of the ordinary accounting of revenues by service type — administrative simplicity is no excuse for adopting a standard that penalizes those carriers, unlike incumbent LECs and other predominantly local service providers, whose services include non-LNP related components

II. ILECs SHOULD NOT RECOVER CARRIER-SPECIFIC COSTS FROM ACCESS CHARGES , UNE AND RESALE SERVICES

MCI has opposed the recovery of carrier-specific costs through incumbent LEC access charges, unbundled network element (“UNE”) and resale services. Bell Atlantic, Cincinnati Bell and SBC in response complain that MCI seeks to calculate the end user surcharges on such services differently for carriers than for other end users.²¹ That is incorrect. What MCI has asked is that the “end user” surcharge only apply to end users, not carriers, so that all service providers are prohibited from recovering their carrier-specific LNP costs from other carriers.

MCI’s petition pointed to the conflict between the cost-based pricing requirements of the Telecommunications Act of 1996 (i.e., incremental cost and avoided cost methodologies for cal-

²⁰ SBC at 6.

²¹ Bell Atlantic at 4; Cincinnati Bell at 5; SBC at 7-8.

culate unbundling and resale prices, respectively) and ILEC imposition of LNP costs on these services. If incumbent LECs are permitted to recover carrier-specific LNP costs from UNE and resale prices, the charges for these services will no longer be based, as required by the 1996 Act, solely on the cost of providing them, but rather will include other costs associated with other services (in this instance LNP). Accordingly, as AT&T and others have agreed, the solution is for the Commission to prohibit the indirect recovery by the ILECs of LNP costs from access charges and UNE/resale rates, for instance by denying SBC's request for the continued separations treatment of LNP costs and by reaffirming its commitment that carrier-specific LNP costs may be recovered only from end users and query service customers, not from other carriers.²²

III. NO JUSTIFICATION EXISTS FOR REJECTING WORLDCOM'S PROPOSAL FOR A TRUE-UP MECHANISM FOR SHARED LNP COSTS

In its response to petitions for clarification, MCI agreed with WorldCom's proposal for a "true-up" mechanism that would require that all carriers cover LNP costs, including interim costs of operating the NPAC database prior to the effectiveness of the *Third Report and Order*.²³ Only Vanguard opposed WorldCom's proposal for a true-up mechanism,²⁴ arguing that this approach would allow incumbent LECs "double recovery" of shared costs from commercial mobile radio service ("CMRS") carriers because CMRS providers are already paying ILEC querying charges.²⁵

In fact, Vanguard's concern is one of over recovery, not double recovery. If a shared LNP cost true-up results in the refund of interim costs paid by incumbent LECs, it is true that some ILEC query service rates may then be too high in relation to the incumbent's actual carrier-

²² AT&T at 13-14; MCI at 5-6.

²³ MCI at 10-12.

²⁴ Vanguard at 6-7.

specific LNP costs. However, the industry's current plans are for a true-up by year-end 1998, thus allowing the Commission to take changed costs into account in approving or rejecting ILEC query service tariffs. In any event, the solution for such a potential over recovery is not to reject the true-up proposal, thus imposing significant punishment upon carriers bearing the initial costs of LNP implementation. Any over recovery by incumbent LECs in their query service charges can be dealt with directly by the Commission, through the complaint process or otherwise, in reviewing the appropriateness of LEC query service rates.

If a shared LNP cost true-up results in some ILEC query service charges being unjust and unreasonable, under Section 202(a) of the Act, Vanguard and other CMRS providers have existing and adequate remedies to protect their interests as query service customers. Moreover, by rejecting a true-up for all Limited Liability Company carriers, Vanguard's remedy will unfairly harm other carriers, such as competitive LECs, for whom query rate over recovery concerns clearly do not apply. Vanguard's irrelevant objections thus should not prevent the plainly needed true-up of shared costs across all carriers, not just those carriers funding interim LNP cost recovery.

²⁵ Vanguard at 6-7.

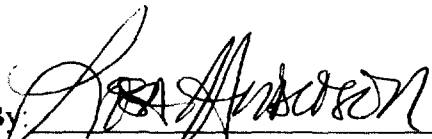
CONCLUSION

For all of these reasons, the Commission should grant MCI's petition for clarification and partial reconsideration, should reaffirm that incumbent may not recover carrier-specific LNP costs from other carriers, and should adopt a "true-up" mechanism for interim shared LNP costs that, to date, have been borne by some carriers but not others.

Respectfully submitted,

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